

SENATE BILL 1765

By Ketron

AN ACT to amend Tennessee Code Annotated, Section
56-6-112; Section 56-6-117; Section 56-6-120 and
Section 56-8-107, relative to insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-6-117(g), is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1)

(A) All testimony, documents, other information in the control or possession of the department that is obtained by the commissioner in an investigation pursuant to this section shall, except as provided in subdivision (g)(1)(B), be confidential and absolutely privileged and shall not be:

(i) Subject to §10-7-503(a) or § 56-1-602;

(ii) Subject to subpoena;

(iii) Subject to discovery; or

(iv) Admissible as evidence in any private civil action.

(B) Notwithstanding subdivision (g)(1)(A), the commissioner is authorized to use the testimony, documents, and other information in the control or possession of the department in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

SECTION 2. Tennessee Code Annotated, Section 56-6-120, is amended by deleting such section in its entirety and by substituting the following:

(a) The commissioner may make investigations necessary for the proper administration of this part. For the purpose of making the investigations, the

commissioner shall have inquisitorial powers and shall be empowered to subpoena witnesses and examine them under oath; provided that:

(1) Any investigatory action be reasonable in scope and relevant to the administration of this part;

(2) In the course of an investigation conducted pursuant to this section, the commissioner shall be given access to all business records of a person licensed or required to be licensed under this part. The department shall endeavor to conduct its investigation in a manner that is least obtrusive to the ongoing business of the person; and

(3)

(A) All testimony, documents, other information in the control or possession of the commissioner that is obtained in an investigation pursuant to this Section shall, except as provided in subdivision (a)(3)(B), be confidential and absolutely privileged and shall not be:

(i) Subject to §10-7-503(a) or § 56-1-602;

(ii) Subject to subpoena;

(iii) Subject to discovery; or

(iv) Admissible as evidence in any private civil action;

(B)

(i) The commissioner is authorized to use the testimony, documents, and other information in the control or possession of the department in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties;

(ii) Subject to subsection (b), a person being investigated pursuant to this section, or counsel for such person, may obtain

from the commissioner a copy of each and any inquisitorial order and complaint filed against the person. Further, upon initiation of a formal proceeding against any person, the person shall be entitled to any and all discovery rights available under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 or the Rules of Civil Procedure.

(b)

(1) Upon issuance by the commissioner of an inquisitorial order or upon receipt by the department of a written complaint against a person, the department shall provide the person with a copy of the inquisitorial order or complaint within thirty (30) days of issuance of the order or receipt of the complaint.

(2) Before seeking a statement from a person being investigated, the department shall notify the person that any statement may be used in an investigation or become evidence in a hearing. Failure of the department to comply with subdivision (b)(1) shall render any statement provided to the department prior to its compliance with subdivision (b)(1) inadmissible in any administrative actions against such person. However, failure to comply with subdivision (b)(1) shall not prevent the department from proceeding with any actions arising from such order or complaint. Further, nothing in this section shall prevent the department from taking a statement from a person being investigated prior to giving the notice required by subdivision (b)(1) as long as it is taken within thirty (30) days of the receipt of the complaint or the entry of the inquisitorial order.

(c) Upon receiving notice under subdivision (b)(1), the person being investigated may obtain a copy of any written, formal or recorded statements made by such person. The department shall produce such information requested pursuant to this subsection (c) within thirty (30) days of the request.

(d) In the course of an investigation conducted pursuant to this section, the commissioner shall have the right to take under oath the testimony of any person involved in the business of insurance. Such person shall be given no less than fourteen (14) days' written notice of the commissioner's intent to take testimony and the place where the testimony will be taken. Upon good cause shown, and in the commissioner's sole discretion, the commissioner may provide additional time to the requester.

(e) If the commissioner requests a person to produce records, originals or copies, in conjunction with an investigation conducted pursuant to this section, and the person from whom the documents have been requested believes the request is overbroad and will not lead to the discovery of facts relevant to the commissioner's investigation, that person may seek review of the commissioner's request by application to an administrative judge, including seeking entry of a protective order. The cost of document production pursuant to this section shall be borne by the person from whom the documents are sought; however, all other costs of investigation shall be borne by the department.

(f) No later than thirty (30) days after completion of an investigation, or closure of a complaint file, the commissioner shall provide notice of such completion or closure to the person being investigated or against whom the complaint was filed.

(g) In the commissioner's annual report, the department shall identify the total number of open investigations, the number of investigations opened in the year covered by the report, and the number of investigations closed in the year covered by the report.

(h) Any investigation initiated under this part shall be completed within two (2) years of receiving a complaint, or the entry of an inquisitorial order, whichever comes first. The filing of an action under subsection (e) shall toll this limitation until such time as there is a final order issued pursuant to the Uniform Administrative Procedures Act, and there is no judicial order staying the effectiveness of the final order. All actions shall be commenced within five (5) years of the accruing of the cause of action. Nothing in this subsection (h) shall prevent the department from taking action based upon an order previously entered by another state or the federal government or a felony conviction, regardless of the date of such order or conviction. Any investigation initiated prior to July 1, 2010, shall be completed or closed, or a contested case action shall be filed as of July 1, 2012.

(i) Any notices required by the department pursuant to this section may be transmitted electronically.

SECTION 3. Tennessee Code Annotated, Section 56-8-107(d), is amended by designating the existing language as subdivision (d)(1) and by adding a new subdivision thereto, as follows:

(2) Notwithstanding subdivision (d)(1), any person being investigated pursuant to this section, or counsel for such person, may obtain from the commissioner a copy of an inquisitorial order or any complaint filed against such person and a copy of any written, formal or recorded statements made by that person. Upon initiation of a formal proceeding against a person, such person shall be entitled to any and all discovery rights available under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 or the Rules of Civil Procedure.

SECTION 4. Tennessee Code Annotated, Section 56-6-112(a), is amended in the first sentence by deleting the language “§ 56-2-305” and by substituting instead the language “this section”.

SECTION 5. Tennessee Code Annotated, Section 56-6-112 is amended by adding the following as appropriately designated subsections:

(g) If, after providing notice consistent with the process established by § 4-5-320(c), and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

(1) The person to cease and desist from engaging in the act or practice giving rise to the violation;

(2) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the person's license.

(h) In determining the amount of penalty to assess under this section, or in determining whether the violation was a knowing violation for the purpose of subdivision (g)(2), the commissioner shall consider:

(1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) The circumstances leading to the violation;

(4) The severity of the violation and the risk of harm to the public;

(5) The economic benefits gained by the violator as a result of noncompliance;

(6) The interest of the public; and

(7) The person's efforts to cure the violation.

SECTION 6. This act shall take effect July 1, 2011, the public welfare requiring it. This act shall not be retroactively applied.